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Brexit Effect

The morning after the vote before

On 24 June 2016, we will know whether the UK has voted to remain in the European Union or to leave it.

Pollsters appear unable to predict with any certainty what the outcome will be. This is perhaps unsurprising given that the answer appears to lie in the hands of the “undecideds” who do not even know themselves how – or if – they will vote.

Majority wins – so 50.1% of a low turnout number could leave the UK Government implementing a decision supported by the majority of those voting, but not by the majority of its population.

A wealth of legal analysis ([click here](#) to access it) may become redundant, or form a blueprint for identifying and responding to the legal implications of Brexit as it happens.

So let us assume it is the morning of 24 June – the world has woken up to the outcome:

The Legal Headlines: Engage Early

Remain

The status quo continues and there is renewed focus on making the most of the EU, including implementing Cameron's "new deal", delivering current policy initiatives, such as completing the single market for services, plus a demand for reform where the agenda is not yet set – engage early to put your business priorities on the agenda.

Leave

On Brexit occurring (which does not happen immediately), all existing UK trading arrangements with EU, EFTA and rest of world will lapse, unless replacements are agreed, so negotiations and capacity constraints will require priorities and potential compromises to be identified and decisions on which trading arrangements with new markets to progress – engage early to ensure your priorities are not the compromises.

What does it mean and what happens next (without trying to predict consumer and market reaction ...)?

Remain

- The UK is committed, politically, to remaining a member of the EU and, legally, the status quo continues.
- The UK retains its sovereign right under the treaties to withdraw from the EU and can exercise it at any point in the future if the UK Government chooses to do so.
- The enhancements to the UK's membership terms contained in the UK's "new deal" on membership (agreed by David Cameron in February 2016) becomes binding on the signatories. The deal is a complex mix of rights and public acknowledgements of existing positions so the process and timing for implementation will vary. The "new deal" is designed to deliver enhancements to the status quo in a number of areas, including:
 - **Protections for non-Eurozone countries:** Reassurances to Member States (like the UK) who do not use the Euro, about protection from any future steps to deepen economic and monetary union of countries in the Eurozone
 - **Enhancing competitiveness:** Commitments that the EU will increase efforts to enhance competitiveness
 - **Further powers for national parliaments:** Mechanism for a group of national parliaments to block proposed EU legislation where the issues should be addressed at national level
 - **Emergency brake:** A potential 'emergency brake' in certain circumstances on the payment of state benefits to people moving between EU Member States
 - **Exceptions to the free movement of people:** Enhanced ability to deport certain EU immigrants
 - **Exemption from moves to ever closer union:** Recognition that the UK is not committed to further political integration and cannot be subject to measures based on that objective.
- The headline rights are outlined in the new deal but the next phase will require considerable focus on developing the detail in order to maximise the benefits, particularly on the commitment to competitiveness – business can secure opportunities by engaging with this process.
- The UK holds the EU Presidency from July to December 2017, which includes increased influence in the six months before and after that period. Having committed to remain, next year's Presidency would give the UK the opportunity to prioritise key reforms – particularly given the support in many other Member States for reform.

Leave

- The UK is committed, politically (though not legally) to withdrawing from its membership of the EU.
- The UK would not have an automatic right to re-join the EU if it changed its mind following Brexit. The UK would need to apply as a new member and all Member States would need to approve. Most Member States have been obliged to accept the Euro on joining and/or do not have the package of rebate and opt-outs which the UK currently benefits from, impacting on the likelihood of UK being able to retain its current package of rights if permitted to re-join.
- Brexit would not occur immediately, but the “new deal” which David Cameron agreed in February would automatically lapse on the referendum result being announced, irrespective of whether a Brexit took effect, so those enhancements to the status quo would not apply during the renegotiation period (which is expected to last several years).
- The UK would also lose political influence within the EU immediately on a Leave vote so the policy and regulatory agenda would proceed without accommodating the UK’s views, but measures implemented would be binding on the UK until Brexit takes effect.
- Although not permissible legally, the UK could adopt a policy of non-compliance in relation to areas of EU law prior to Brexit taking effect, but it would remain subject to the remedies applicable to such non-compliance. Such non-compliance would be unlikely to strengthen its hand in relation to negotiating its future relationship with the EU.
- The exit process is triggered by a two-year notice period being served but the process is unprecedented and uncertain. It is expected to progress as follows:
 - The UK Government would need to decide when to serve the withdrawal notice which would trigger the commencement of the exit negotiations and the two-year notice period. The timing may be impacted if the Prime Minister resigns and the Conservatives need to hold a leadership election.
 - There is no time limit for when the withdrawal notice needs to be served – but there is no obligation on the rest of the EU (rEU) to apply resources to negotiating an exit until it is served. The Leave campaign has indicated that it may seek to agree an exit deal before formally serving notice. There is no legal obligation on rEU to commence exit negotiations before the notice is served, though it may consider it politically acceptable.
 - The notice period does not start running until notice is served so a delay in serving the notice extends the period for which the UK remains bound by its membership terms including financial contributions.
 - Any extension to the notice period requires the agreement of all 27 Member States.
 - During the notice period, the UK would also seek to negotiate the terms of its on-going relationship with the EU but, on expiry of the two-year period, the UK’s entitlements and obligations under the Treaties automatically lapse (along with its entitlements under all free trade agreements with the rest of the world) unless all 27 Member States have agreed an extension.



- The EU Member States will need to formulate their strategy for (a) agreeing and implementing the exit process, including the withdrawal of UK representatives from EU institutions and related arrangements, (b) re-negotiating the future trading arrangements and (c) balancing the time required for those against its competing priorities of responding to any instability within the EU which may be triggered by Brexit and its responsibilities for on-going issues of migration and delivering fiscal stability, growth and employment.
- Any new UK deal covering mixed trading arrangements requires approval by all 27 Member States so it is not possible, legally or politically, for one industry sector within one Member State or even multiple industry sectors or multiple Member States to force a deal through, whatever the political imperative within the relevant Member State. It requires the competing interests and political agendas of all Member States to be reconciled. The trading or other interests of the EU therefore need to be disaggregated in order to assess the likelihood of a deal being done. This is demonstrated by agreement to the Canadian free trade deal (which has taken over seven years to progress to this stage) being withheld by one Member State.
- If no other deal on trading arrangements has been agreed with the EU and third countries during the notice period, or any extension, then the UK will need to establish its own tariffs in accordance with the WTO most favoured nation principle.
- Pending completion of the UK's trade arrangements, UK goods would attract higher tariffs in third countries than goods from EU Member States. This applies equally to EU goods being imported to the UK which would be subject to higher WTO tariffs.
- The WTO rules on services have a narrow scope. This would impact the UK's ability to export services to the EU, for example, due to the loss of "passporting" rights for financial institutions eg Switzerland is in EFTA and in the Schengen Zone but uses London as a hub as it does not have full access to the Single Market for financial services.
- EU law has become integrated with UK law so, irrespective of any policy changes the government may wish to make, the UK will need to audit and amend its existing legislation to ensure that its laws continue to function as intended on Brexit.
- The specific legal implications of Brexit will vary by sector ([click here](#) for detail) and will depend on the EU rights and regulations applicable to it, for example, the ability to share data across a UK/EU border or to recruit staff from other EU countries.

How can we help?

Analysis, Tools, Monitoring, Implementation

We have conducted an in-depth analysis of how Brexit will affect the different industry sectors and worked with a range of clients to develop their contingency planning. We understand the range of issues and responses. We can guide you on how to optimise your business response to either outcome.

As the legal landscape emerges from the referendum fog, we can alert you to relevant developments and advise on navigating the new opportunities and challenges it will deliver.

We have a range of options available to support you on contingency planning/contract review/policy and advocacy/implementation, from packages using self-diagnostic response tools to in-depth analysis of structural solutions. Please get in touch at brexit@hoganlovells.com if you would like more details.



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